

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RODNEY H. TRIMPE
Claimant

VS.

CITY OF WICHITA
Respondent,
Self-Insured

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Docket No. 258,168

ORDER

Respondent appealed the June 15, 2001 Award entered by Administrative Law Judge Jon L. Frobish. The Board decided this claim after placing it on the summary calendar.

APPEARANCES

Steven R. Wilson of Wichita, Kansas, appeared for claimant. Edward D. Heath, Jr., of Wichita, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a March 15, 2000 accident and resulting injury to the left hand. In the June 15, 2001 Award, Judge Frobish awarded claimant permanent disability benefits for a 22 percent functional impairment to the hand. The Judge arrived at that percentage by averaging the 15.75 percent rating provided by Dr. J. Mark Melhorn and the 28 percent rating provided by Dr. Pedro A. Murati. The Judge did not average in the 10 percent rating provided by Dr. Robert L. Eyster because, according to the Judge, the doctor did not consider all the factors in analyzing claimant's impairment. In finding a 22 percent functional impairment to claimant's hand, Judge Frobish explained:

The Guide to the Evaluation of Permanent Impairment 4th Edition
provides a summary of steps for evaluating impairments of the upper

extremities. One of those steps involves the evaluation of individual digit impairment. It states that you should combine impairments due to amputation, sensory loss, loss of motion, and other disorders. The Court finds that Dr. Melhorn and Dr. Muarati [sic] have followed these steps. Dr. Eyster used the chart for amputation of that digit and provided the Claimant with that rating. This is not taking into account the other factors for a complete rating. The Court therefore finds that the evaluation of Dr. Eyster is incomplete and will utilize the evaluations of Dr. Melhorn and Dr. Murati. The Court will average those ratings and round it to the closest whole number. This would give the Claimant a 22% impairment to the hand.

Respondent contends Judge Frobish erred. Respondent argues Dr. Eyster's 10 percent functional impairment rating to the hand was derived by using the fourth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA *Guides*) and, therefore, that rating should have been included in averaging the functional impairment ratings. In the alternative, respondent argues that Dr. Murati's rating should not have been included in the average because it was much higher than the other two ratings. Accordingly, respondent requests the Board to modify the Award by averaging the impairment ratings provided by Dr. Eyster and Dr. Melhorn and by finding claimant has sustained a 13 percent functional impairment to the hand.

Conversely, claimant requests the Board to affirm the Award. Claimant argues the Judge was justified in finding that Dr. Eyster's evaluation was incomplete.

The only issue before the Board on this appeal is what percentage of functional impairment did claimant sustain from the March 15, 2000 accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The Award should be modified to award claimant permanent disability benefits for an 18 percent functional impairment to the left hand.
2. The parties stipulated that claimant injured his left hand on March 15, 2000, when a log that he was loading onto a flatbed rolled backwards onto his left hand. The accident shattered claimant's knuckle on the left ring finger. Claimant is left-handed.
3. Respondent referred claimant to Dr. Robert L. Eyster, an orthopedic surgeon, for treatment. The doctor x-rayed claimant's hand and placed it in a cast. Although he was the treating physician, Dr. Eyster's contact with claimant was limited as the doctor spent only a few minutes with claimant at each of their visits. Claimant's testimony is uncontradicted that the last time he saw Dr. Eyster the doctor spent only a couple of

minutes with him and did not examine his hand, despite the doctor's statements that claimant was being rated.

4. As a result of the accident and resulting injury, claimant experiences pain that radiates up the back of the wrist, a loss of grip strength in the left hand, and occasional tingling in the injured finger.

5. Respondent presented Dr. Eyster's testimony in this claim. Dr. Eyster diagnosed claimant as having a fracture of the knuckle of the left fourth digit or ring finger. When the doctor released claimant in June 2000, claimant had lost most of the motion in the injured metacarpal phalangeal joint and was not using the finger. Dr. Eyster believed claimant had no use of the injured finger and rated claimant as having total impairment to the fourth digit, which converted to a 10 percent functional impairment to the left hand. The doctor testified that he rated claimant using the *AMA Guides*, Table 1, page 18.

6. Respondent also presented the testimony of Dr. J. Mark Melhorn, whom respondent hired to evaluate claimant for purposes of this claim. Dr. Melhorn is a board-certified orthopedic surgeon who is also board-certified with respect to the hands and upper extremities. The doctor evaluated claimant in May 2001 for a painful left hand and left ring finger proximal phalangeal fracture with osteoarthritis. Following the *AMA Guides*, the doctor considered claimant's loss of motion; pain, discomfort and loss of sensation; loss of strength; impairment relative to the skin; and potential for continued functional loss, and determined that claimant had sustained a 15.75 percent functional impairment to the left hand. Because of inconsistencies in range of motion measurements he obtained, Dr. Melhorn's impairment rating did not include any impairment for lost range of motion.

Dr. Melhorn testified that the *AMA Guides* provide that functional impairment can be determined by only using range of motion or amputation as a guide because the impairments indicated for abnormal range of motion or amputation include a component for pain, suffering and strength loss. The doctor testified, in part:

I will repeat what the Guides say. The Guides say that if an individual has an amputation and/or a measurable loss of range of motion that the impairment provided for either of those two scenarios includes information for the strength loss and pain and discomfort associated with the loss of function due to either the amputation and/or abnormal range of motion and that additional losses or additional numbers are not required at that point.¹

Nonetheless, the doctor admits that the *Guides* do not require that functional impairment be based solely on amputation or lost range of motion and that considering other factors along with the lost range of motion is not prohibited.

¹ Deposition of Dr. J. Mark Melhorn, May 17, 2001; pp. 14, 15.

7. Claimant hired Dr. Pedro A. Murati for purposes of rendering a functional impairment rating. The doctor is board-certified in physical medicine and rehabilitation and also certified as an independent medical examiner. Dr. Murati examined claimant in November 2000 and diagnosed left fourth digit pain status post fracture and left hand pain secondary to left fourth digit fracture. Using the *AMA Guides*, the doctor rated claimant as having a 28 percent functional impairment to the left hand. The doctor used a finger impairment worksheet from the *AMA Guides*, and arrived at the functional impairment rating, as follows:

According to the Fourth Edition of the AMA Guides to the Evaluation of Permanent Impairment, for the loss of range of motion and the sensory loss of the left 4th digit using the finger impairment worksheet patient receives a 66% digit impairment, which converts to a 7% hand impairment. For the hypoesthesia along the entire radial distribution of the dorsal aspect of the hand using table 16 on page 57 patient receives a 2% hand impairment. For the 43% strength loss index of the left hand using table 32 and 34 on page 65 patient receives a 22% hand impairment. Using the Combined Values Chart on page 322 these combine for a 28% hand impairment.²

8. The Board concludes that all three doctors appropriately utilized the *AMA Guides* in rating claimant. The record does not establish that one doctor's analysis of claimant's functional impairment was any more accurate than the other two doctors' analyses. Therefore, the Board gives equal weight to the three ratings ($10\% + 15.75\% + 28\% = 53.75\%$; $53.75\% \div 3 = 17.92\%$) and concludes that claimant has an 18 percent functional impairment to the left hand for which he should receive permanent disability benefits.

AWARD

WHEREFORE, the Board modifies the June 15, 2001 Award and decreases claimant's permanent disability to the left hand from 22 percent to 18 percent.

Rodney H. Trimpe is granted compensation from the City of Wichita for a March 15, 2000 accident and resulting disability. Mr. Trimpe is entitled to receive .14 weeks of temporary total disability benefits at \$383 per week, or \$53.62, plus 27 weeks of permanent partial disability benefits at \$383 per week, or \$10,341, for an 18 percent permanent partial disability, making a total award of \$10,394.62, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

² Page 3 of Dr. Murati's November 29, 2000 medical report, which is Exhibit 2 of the doctor's March 15, 2001 deposition.

IT IS SO ORDERED.

Dated this ____ day of October 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I would affirm the finding that claimant sustained a 22 percent functional impairment to the left hand. That rating reasonably quantifies claimant's loss and I find no reason to disturb it on appeal. Although Dr. Eyster's rating may be technically correct, I find that it is not as accurate as Dr. Melhorn's and Dr. Murati's. Therefore, like the Judge, I would exclude Dr. Eyster's 10 percent rating from the mathematical average.

BOARD MEMBER

c: Steven R. Wilson, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director